IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Inder Singh v. State of Rajasthan & Ors.

(1)S.B.CIVIL WRIT PETITION NO.5960/2006

Vinod Gaur v. State of Rajasthan & Ors.

(2)S.B.CIVIL WRIT PETITION NO.5961/2006

Petitions under Article 226 of the Constitution of India.

Date of Order :: 28th November, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Kuldeep Mathur, for the petitioners.
Mr. B.L.Tiwari, Deputy Government Advocate.
Mr. P.P.Choudhary, for the respondent No.4.

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REPORTABLE

BY THE COURT :

These two petitions for writ involve common questions of facts and law, therefore, are decided and governed by this common judgment.

The petitioners by an order dated 11.10.2006 issued by the Collector, Jodhpur are subjected to transfer as Patwari from one patwar circle to another with different Tehsil in District Jodhpur. The challenge is given to the order aforesaid being in violation of Rule 9 read with Rule 412 of the

Rajasthan Land Revenue (Land Records) Rules, 1957 (hereinafter referred to as “the Rules of 1957”). The Rules aforesaid read as follows:-

> “9.Transfers.-(i)The Collector may transfer a Patwari from one circle or tehsil to another in his own district: but no transfer of a Patwari from one district to another shall be made without the sanction of the Member, Land Records, Board of Revenue. Transfers from one division to another will be sanctioned by the Board of Revenue. The Sub-divisional Officers are also empowered to transfer a Patwari from one circle to another in the same tehsil or to another tehsil in their sub-division on sufficient grounds.
>
> Provided that if a Patwari is transferred out of the district on his own request he shall rank junior to existing Patwaris of that district.
>
> (ii)Transfers of patwaris should not be made unless the officer has satisfied himself that such transfer are necessary in the interest of efficiency of work or to fill up vacancy created by long leave, resignation, dismissal, suspension or transfer of a Patwari. The Patwari going on transfer shall have to complete all his record and clear all his work in arrear before handling over charge to his successor. The Tehsildar may, with the approval of the Sub-Divisional Officer, get the incomplete record completed by employing extra staff and paying such staff by deducting the required amount from the salary of the negligent Patwari. Then

> unsatisfactory work or conduct of a Patwari should not be a ground for his transfer but for penal action.
>
> 412.Administrative matters pertaining to Patwaris.-The Collectors are solely responsible for the appointment, transfer and discipline of Patwaris. Transfer of Patwaris are ordinarily undesirable and should on no count be made to suit the convenience of individuals. They can only be made under the conditions given in paragraph 9 and these conditions should be strictly observed. In order to avoid unnecessary transfers, Patwaris picked out for transfer, should, so far as possible be exchanged with one another rather than with other Patwaris. Transfers by way of punishment are not contemplated by law. Moreover, a transfer is hardly a substitute for punishment."

The requirements to transfer a Patwari from one patwar circle to another in different Tehsil of same District as per Rules 9 and 412 of the Rules of 1957 are :-

> (1)the power to transfer a Patwari vests with the Collector;
>
> (2)the transfer of Patwari in ordinary course is undesirable;
>
> (3)the Collector can transfer a Patwari only on being satisfied that it is necessary in interest of work or to fill up vacancies created due to various reasons;

(4)a Patwari should not be subjected to transfer for unsatisfactory work or for his conduct. No transfer of a Patwari should be made to accommodate individuals.

The grounds to assail the order impugned in the present petitions for writ is non application of mind by the Collector as per Rules 9 and 412 of the Rules of 1957 while effecting transfers of the petitioners.

It is contended that the order of transfer is passed by the Collector under the instructions of the Deputy Secretary to the Government of Rajasthan, Department of Revenue Group-II without getting himself satisfied that it was necessary for efficiency of administration or for any other reason given in Rule 9 of the Rules of 1957. It is also urged that the petitioners are subjected to transfer to accommodate private respondents at the place of their choice.

In reply to the writ petition the official respondents came forward with the case that:-

(1)the order impugned is issued in pursuant to the directions of the State Government making relaxation in Rule 9(i) of the Rules of 1957; and

(2)the Collector is having absolute authority to adjudge administrative exigency to effect

transfer, therefore, such an order cannot be subjected to challenge.

The respondent No.4 raised various objections for invoking writ jurisdiction to challenge the order impugned dated 15.10.2006 and those are:-

(1)an efficacious alternative remedy is available to the petitioners to challenge the order impugned by way of filing an appeal under the Rajasthan Civil Services (Service Matters) Appellate Tribunal Act, 1976 (hereinafter referred to as “the Act of 1976”), therefore, this Court must restrain itself to exercise discretionary powers vested to it by Article 226 of the Constitution of India;

(2)the order of transfer should not be interfered with if there is no malafides or violation of statute and the instant matters lack such reasons;

(3)a government servant cannot claim to remain at a specific place as it is out look of the government where the incumbent is to be posted;

(4)the petitioners themselves were posted at their present place of posting under an order dated 15.7.2006 and that too was in violation of Rules 9 and 412 of the Rules of 1957, therefore, by conduct they are disentitled to challenge the order dated 11.10.2006; and

(5)the quashing of the order dated 11.10.2006 shall restore the order dated 15.7.2006, i.e. the earlier order of transfer that was also passed in violation of Rule 9 read with Rule 412 of the Rules of 1957, hence this Court must not exercise its discretionary powers to quash the order dated 11.10.2006.

After considering the averments contained in pleadings, this Court by order dated 8.11.2006 directed the Collector, Jodhpur as under:-

(1)to place on record the order passed by the Government of Rajasthan making relaxation in Rule 9(i) of the Rules of 1957 as averred in para 2 of the reply filed on behalf of the respondents No.1, 2 and 3;

(2)to place on record the order dated 9.10.2006 issued by the Deputy Secretary to the Government of Rajasthan, Department of Revenue Group-I, that is referred in order dated 11.10.2006;

(3)to place on record copy of the order dated 15.7.2006 from Divisional Commissioner, Jodhpur referred in the order dated 15.7.2006 (Anx.A/2) passed by the Collector, Jodhpur;

(4)to produce the entire record showing that the Collector, Jodhpur before issuing the orders dated 15.7.2006 and 11.10.2006 adjudged efficiency of the Patwaris so transferred to satisfy himself that such transfers are necessary in the interest of efficiency of the work or to fill up the

vacancy created by long leave, resignation, dismissal, suspension or transfer of Patwari; and

(5)to place on record the government orders referred in column No.7 of the order dated 15.7.2006 (Anx.A/2) on basis of which transfers of the persons whose names appears at Serial No.1 to 65 were effected by the order aforesaid.

The documents desired as per the order dated 8.11.2006 except noted at Serial Nos.1 and 4 are shown to the Court and their photocopies are taken on record. Quite frankly it is stated by the official respondents that there was no order given by the Government to relax Rule 9 and no such power is available under the Rules of 1957. The averment with regard to relaxation of Rule 9 of the Rules of 1957 by the State Government was erroneously made in reply to the writ petition. It is also stated that while passing the order impugned the Collector has not recorded his satisfaction for effecting the transfers of Patwaris as the transfers were made to implement the instructions given by the government.

In the background as stated above, this Court is to examine contentions of the parties.

QUESTION OF AVAILABILITY OF ALTERNATIVE REMEDY

It is the position admitted that the petitioners are having an alternative remedy under the

Act of 1976 but availability of such remedy does not restrict authority of the Court to examine validity of an order that is apparently in violation of statute and the author of the order also in quite unambiguous terms accepts violation of the statute.

In the instant matters the Court has already gone through the original record of the respondents that reveals for absolute violation of Rules 9 and 412 of the Rules of 1957. The counsel for the State also clarified that the Collector while passing the order impugned has not recorded his own satisfaction warranting transfers of the petitioners and other Patwaris in efficiency of the administration or for the reasons mentioned under Rule 9 of the Rules of 1957. It is also specifically stated that the order of transfer is issued under the instructions of the Deputy Secretary to the Government of Rajasthan, Department of Revenue Group-II.

Counsel for the respondent No.4 straneously urged that in normal course the Court should not entertain a petition if an efficacious alternative remedy is available to the petitioners and in the instant matters too no extraordinary circumstance exists to over look the usual practice. To substantiate the contention reliance is placed by the counsel on various judgments of this Court (SBCWP No.1281/2006, Loonkaran v. State & Ors., decided on

11.5.2006; SBCWP No.3834/2006, Satyanarayan Malot v. State & Ors., decided on 26.7.2006; and SBCWP No.3441/2006, Nathu Khan v. State & Ors., decided on 14.7.2006) but all those cases pertain to challenge the order of transfer being in violation of administrative instructions, not even in a single case the violation of statute is pleaded.

Beside that, doctrine of availability of an alternative remedy is a self-imposed restrainment and a policy adopted by the Courts. It necessarily does not bar writ jurisdiction. The Court may in appropriate cases refuse to exercise discretion vested with it and at the same time despite availability of an alternative remedy may issue prerogative writs, orders or directions to erase an illegality that is otherwise impossible to swallow. Present one are the cases where the illegality is so irritating that its currency cannot be permitted to be in existence by relegating the petitioners to avail alternative remedy. In view of it the objection raised by counsel for the respondent No.4 to relegate the petitioners to avail alternative remedy stands over ruled.

INTERFERENCE WITH AN ORDER OF TRANSFER

It is urged by counsel for the respondent No.4 that an order of transfer is not supposed to be examined by the Courts unless it suffers from

malafides and also if not in contravention of the statute. It is emphasised that no such ground is available in the present cases, therefore, no interference of this Court under Article 226 of the Constitution of India is warranted.

I do not find any force in this contention of counsel for the respondent No.4 as the sole case of the petitioners is that the order impugned is passed by the Collector in violation of Rules 9 and 412 of the Rules of 1957, as such the objection so raised is of no consequence.

CONDUCT OF THE PETITIONERS

On behalf of the respondent No.4 much emphasis is given to the conduct of the petitioners who themselves by an order dated 15.7.2006 were posted at the place wherefrom they are subjected to transfer under the order dated 11.10.2006. According to counsel for the respondent No.4 the order dated 15.7.2006 too was passed by the Collector in non compliance of the Rules 9 and 412 of the Rules of 1957 and the petitioners availed transfer at the place of their choice by that order, therefore, their conduct disentitled them to invoke extraordinary jurisdiction of this Court.

May it be true that the order dated 15.7.2006 was passed by the Collector, Jodhpur in violation of Rules 9 and 412 of the Rules of 1957 and under that order the petitioners were also subjected to transfer but that does not preclude them from challenging validity of the order dated 11.10.2006. Conduct of a party applying for a writ, order or direction under Article 226 of the Constitution of India is an important factor that require consideration but an illegality cannot be allowed to survive by rejecting the writ application solely on the ground of conduct as the prime consideration before the Court is to maintain and protect the Rule of Law. The supremacy of the Rule of Law must be ensured to have a living administrative set up in a democratic society. An act or conduct of a person applying for writ may be deplorable and deserving deprecation but merely on that pretext Rule of Law cannot be kept at back bench.

In the instant matters though the petitioners availed transfer under the order dated 15.7.2006 that is in violation of Rules 9 and 412 of the Rules of 1957 but for this reason a licence cannot be given to the authorities to act in violation of law on every occasion.

RESTORATION OF ILLEGALITY ON QUASHING THE ORDER DATED 15th OCTOBER, 2006

By placing reliance upon a Full Bench Judgment of this Court in the case of Jagan Singh v. State Transport Appellate Tribunal Rajasthan (AIR 1980 Rajasthan 1), it is contended by counsel for the respondent No.4 that on quashing the order dated 11.10.2006 the earlier order of transfer dated 15.7.2006 shall come in currency and that order too was passed in violation of Rules 9 and 412 of the Rules of 1957, as such the Court by quashing the order dated 11.10.2006 shall perpetuate an illegality.

I do not find any force in the contention raised by counsel for the respondent No.4 and the reliance upon Full Bench Judgment of this Court in the case of Jagan Singh (supra) is also absolutely misplaced. In the case aforesaid a quasi judicial tribunal though not having jurisdiction to examine validity of an order considered the same and quashed that being illegal. The Full Bench of this Court held that even though the quasi judicial forum was not having the jurisdiction to examine validity of the order concerned, but once an order is found illegal then this Court merely on the count of jurisdiction shall not exercise its powers under Article 226 of the Constitution of India to restore and perpetuate an illegality. On the contrary, in the present cases if this Court does not exercise its powers under Article 226 of the Constitution of India, that will amount to giving currency to an order that is illegal.

EFFECT OF THE NON-COMPLIANCE OF RULES 9 & 412

On touching merits of the cases, from perusal of the pleadings and the record of the respondents, I found wholesum violation of Rule 9 and 412 of the Rules of 1957. The government servant other than the Patwaris in State of Rajasthan may be subjected to transfer looking to administrative exigency as per Rule 20 of the Rajasthan Service Rules, 1959, however, in the cases of Patwaris special provisions are prescribed for effecting their transfers under Rule 9 of the Rules of 1957.

According to Rule 9 of the Rules of 1957 a Patwari from one Tehsil to another Tehsil in the same district can be transferred by the Collector on being satisfied that such transfer is necessary in interest of efficiency of work or to fill up the vacancies created by long leave, resignation, dismissal, suspension or transfer of a Patwari. Sub-rule(ii) of Rule 9 of the Rules of 1957 further provides that the Patwari on going transfer before getting relieved shall have to complete all his record and clear all his work in arrear. The arrears of work may further be completed by employing extra staff in the event of transfer of a Patwari. The requirements of Rule 9 of the Rules of 1957 to transfer a Patwari are further asserted and reiterated by Rule 412 of the Rules of 1957 to the extent that a transfer of Patwari is

ordinarily undesirable and should not be made to suit convenience of individuals. The provisions of Rule 9 read with Rule 412 of the Rules of 1957 make it clear that the transfer of a Patwari is not a normal incidence of service but is an exception. The legislature chose to prescribe statutory guidelines for transfers of Patwaris looking to their special status in land revenue and land record operations.

A Patwari is a basic administrative unit in administrative hierarchy of government that is dealing with the land revenue, land records and settlement of land. A Patwari is required to discharge quite important statutory duties as prescribed under Chapter-III of the Rules of 1957. A Patwari is a living link between the government and the land holders. The State of Rajasthan, as other parts of the country, is also dominated by farmers and the largest part of the population is involved in profession of agriculture. A Patwari is required to keep living relations with the agriculturists and also required to keep absolute vigilance with revenue records to protect rights of the State and also to maintain harmony and peace among land holders and to avoid unwanted land disputes in his patwar circle. Looking to important statutory duties of a Patwari the law framers provide a special procedure for effecting their transfers. The administrative officers must follow the statutory requirements prescribed to

transfer a Patwari. The compliance of the provisions of Rule 9 read with Rule 412 of the Rules of 1957, while transferring a Patwari is mandatory.

In the instant matters the Collector, Jodhpur without satisfying himself as to whether the transfer of Patwaris under his orders dated 15.7.2006 and 11.10.2006 is for efficiency of the administration, effected the transfers of number of Patwaris by getting instructions from the Deputy Secretary to the Government of Rajasthan, Department of Revenue Group-II. The order passed by the Deputy Secretary on behalf of Government is also shown to the Court and that is nothing but a list containing names of Patwaris who are to be transferred with the place where they are to be posted. By the statute a power is given to the Collector to transfer a Patwari from one Tehsil to another Tehsil in his district and such power is required to be exercised by him only by satisfying himself that the transfer of a Patwari is necessary in efficiency of the administration. The State Government may prescribe policy to assess the efficiency of the administration but in the present cases I found that the State Government by its orders directed the Collector, Jodhpur to transfer certain Patwaris. As a matter of fact the State Government in the instant matters has abducted the statutory powers of the Collector as prescribed under Rule 9 of the Rules of 1957.

It is surprising that the Collector, Jodhpur also chose to act upon the directions given by the Deputy Secretary to the Government of Rajasthan, Department of Revenue Group-II, instead to follow the statute. In a country like ours precedence is always required to be given to Rule of Law and not to other considerations. If a direction is given by any officer of the State Government in contravention of a statute then the duty of the Collector was to point out the requirement of law and to act according to that only. In the present matters the Collector instead of giving preference to law decided to violate the same by making order of transfers in violation of Rule 9 read with Rule 412 of the Rules of 1957. In view of it, I am of the considered opinion that the order impugned deserves to be quashed being in violation of Rule 9 read with Rule 412 of the Rules of 1957.

Counsel for the respondent No.4 quite empathetically urged that this Court, if found the order dated 15.7.2006 also in violation of Rule 9 of the Rules of 1957, then that too must be quashed.

From perusal of the record produced by the respondents No.1, 2 and 3 I found violation of Rule 9 read with Rule 412 of the Rules of 1957 in passing the order dated 15.7.2006 but, I do not consider it appropriate to quash that as no one has given

challenge to that order and all the transfers made in pursuant thereto have acquired finality. I am also not disturbing all the transfers made under the order dated 11.10.2006, except the transfers of the petitioners as all other persons have already acted upon the orders of their transfer.

In view of whatever discussed above, these petitions for writ are allowed. The order dated 11.10.2006 passed by the Collector, Jodhpur is quashed to the extent it relates to transfers of the petitioners and the respondent No.4 in both the petitions for writ.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.